

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOSHUA D. BRODSKY,

Plaintiff,

vs.

WARDEN BACA, et al.,

Defendant.

3:14-cv-00641-RCJ-WGC

ORDER

Before the Court is Plaintiff's Motion for District Judge to Reconsider Order (ECF No. 91). Plaintiff objects to the Magistrate Judge's Order Denying Plaintiff's Motion for Discovery Deadline and Trial (ECF No. 86). For the reasons stated below, the Court denies the motion.

Rule 72(a) permits a district court judge to modify or set aside a magistrate judge's non-dispositive ruling that is clearly erroneous or contrary to law:

When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

Fed. R. Civ. P. 72(a). Local Rule IB 3-1(a) is the equivalent local rule. "Under Rule 72(a), '[a] finding is "clearly erroneous" when, although there is evidence to support it, the reviewing court

1 on the entire evidence is left with the definite and firm conviction that a mistake has been
2 committed.”” *Rafano v. Patchogue-Medford Sch. Dist.*, No. 06-cv-5367, 2009 WL 789440, at
3 *12 (E.D.N.Y. Mar. 20, 2009) (quoting *Burgie v. Euro Brokers, Inc.*, No. 05 Civ. 0968, 2008
4 U.S. Dist. LEXIS 71386, at *18 (E.D.N.Y. Sept. 5, 2008) (quoting *Concrete Pipe & Prods. of*
5 *Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 622 (1993))). “An order is
6 contrary to law when it fails to apply or misapplies relevant statutes, case law or rules of
7 procedure.” *Id.*

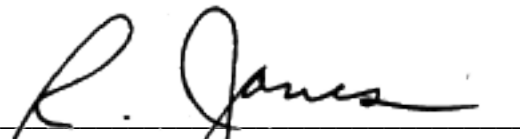
8 Plaintiff argues that initial discovery is to commence 30 days after a defendant accepts
9 service but offers no relevant rule or case to support such an argument. Rule 26(a)(1)(C) states
10 that a party must make initial disclosures at or within 14 days after the parties’ Rule 26(f)
11 conference. Furthermore, as the Magistrate Judge correctly noted, Rule 16-1 states that
12 scheduling orders are to be entered after the defendant answers, and Defendants have not yet
13 answered Plaintiff’s complaint, nor have the parties held a Rule 26(f) conference. Because the
14 Magistrate Judge has not erred, the motion is denied.

15 CONCLUSION

16 IT IS HEREBY ORDERED that the Motion for District Judge to Reconsider Order (ECF
17 No. 91) is DENIED.

18 IT IS SO ORDERED.

19 Dated this 25th day of August, 2015.

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22 ROBERT C. JONES
23 United States District Judge
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